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Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## BALANCING ADMINISTRATIVE DISCRETION WITH FUNDAMENTAL RIGHTS: AN ANALYSIS OF JUDICIAL REVIEW IN INDIA

**AUTHOR** – ANNLIYA ANIL, SCHOOL OF EXCELLENCE IN LAW, TAMIL NADU DR. AMBEDKAR LAW UNIVERSITY

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### ABSTRACT

This article examines how India's judicial review system strikes a balance between administrative discretion and the protection of fundamental rights. Further, it discusses the evolution of judicial review pre and post-independence. The development of judicial review in the Indian context is also covered, with special attention to important rulings that broadened the scope of the same. Additional case laws demonstrate how the judiciary uses its judicial review authority to hold administrative entities accountable.

However, there are several difficulties with the exercise of this function. It faces problems including judicial overreach, delay, and striking a balance between judicial activity and restraint. These difficulties raise questions concerning the judiciary's role in the matters concerned and have an impact on administrative efficiency and governance.

The necessity of a fair judicial review process that upholds administrative authorities' independence while guaranteeing the protection of fundamental rights is reiterated in the article's conclusion. Enhancing judicial effectiveness and preserving constitutional harmony is again stressed in the conclusion for the effective working of the system.

**KEYWORDS:** Judicial Review, Administrative discretion, Developments, Judicial Activism

### I. INTRODUCTION

#### A. Background:

Administrative law governs administrative actions. This branch of law deals with the powers, functions and responsibilities of different organs of the state.

Administrative law is defined by various theorists. Some of them are:

- *“Administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing the judicial review of administrative action”*– K.C. Davis.
- *“Administrative law is the law relating to administration. It determines the organization, powers, and duties of administrative authorities.”* – Ivor Jennings.

This branch of public law deals with individuals and their relationship with the government. It defines the organization and structure of the quasi-judicial and administrative agencies that uphold the law. It mainly addresses official actions and protocols and establishes a control system to ensure administrative agencies operate within legal boundaries. Administrative law is not a codified law but created by judges over time.

In ancient India, The Mauryan and Gupta dynasties had a centralized governmental structure. A few changes to India's administrative law were made upon the arrival of the British. The legislation controlling administrative actions was passed in British India.

Following independence, India decided to transform into a welfare state, which led to an expansion in the state's operations. The need for the Rule of Law and Judicial Inspection of State Acts expanded along with the actions and power of the government and administrative bodies. From there onwards, any laws, rules, or orders made by the administrative authorities that are determined to go beyond their legislative authority were to be deemed ultra-vires, unconstitutional, unlawful, and null and void.

Administrative law in India aims to control administrative actions by regulating delegated legislation and putting administrative discretionary acts under judicial review. It also provides for the composition and structure of tribunals.

#### B. Objectives of the Article:

This essay examines how, in India, judicial review serves as an essential check on administrative discretion while safeguarding fundamental rights. This study explores the degree to which the judiciary checks administrative decisions to prevent abuse of power and protect the rights of people.

Tracing the historical history of judicial review in India—from its origins in British legal traditions to its post-independence evolution—is another goal. The essay will focus on how landmark judgments and constitutional amendments have moulded the existing legal system and affected the way judicial review is conducted now.

We'll also evaluate how judicial review affects governance and administrative effectiveness, with a focus on the conflict between judicial activism and restraint. Further, the paper will explore, via a review of case studies, how various judicial perspectives have impacted the operation of administrative agencies and their consequences for the government.

The article will conclude with suggestions for improving judicial review in India to ensure that judicial review maintains the protection of

fundamental rights while upholding the independence of administrative bodies.

## **II. Evolution of Judicial Review in India:**

### A. Origins from British Colonial Rule

India initiated a process in the 19th century that resulted in the creation, development, and adoption of new legal and administrative institutions. This approach came from shifts in British interests pushing for administrative reforms, and some British perspectives on Indian problems from the early 19th century. The result was a massive administrative apparatus to carry out the rules, as well as a network of laws that applied nationwide. This building was contemporary in design and spread throughout India. Its effects were mixed and were evident from the 20th century. It gave the British government the means to put more influence over India's population.

The maintenance of law and order and the continuation of British authority in India was the primary goal of the British government. There was already a good amount of written legislation in place to help with administrative duties. The Army, the Police, and the Civil Service were the three principal pillars of British rule in India. They took steps to introduce autonomous administration in the country. They still did not want to interfere with certain Indian laws but wanted to create new instrumentalities to merge with that of the local laws.

The introduction of the rule of law, a British legal tradition aimed at making all government decisions in accordance with the law, with no arbitrariness by ensuring administration was done subject to legal constraints. The objective here was to create a system that would go hand-in-hand with the already existing Indian laws, with the British ideas of justice, discipline, and supremacy of law over anything. This principle laid the groundwork for judicial review, which now is the central of Indian administrative law.

The concept of judicial review was introduced in India to keep the administrative authorities and



their action within the bounds of the law, keeping a check on them to ensure there is no scope for arbitrariness. The Indian Constitution has given the power of judicial review to the higher courts of the State. Along with this, the principles of natural justice were also incorporated by the judiciary while reviewing the actions taken by the administrative authorities.

Hence, the traces of colonial British legal traditions all over in the Constitution as well as the organs of the government of India, particularly judicial review of administrative actions which still plays a pivotal role in India.

#### B. Post- Independence Developments

The courts, the Apex Court as well as the High Courts are vested with the power of judicial review. It has been practised widely and the courts have increased the scope of judicial review through their appropriate timely acts of review in various cases. Unlike the United States, the court is also given the power to review constitutional amendments.

Starting from the *Shankari Prasad Case*<sup>1</sup>; where the 1st constitutional amendment was challenged, various constitutional amendments have been challenged in the courts on substantive grounds several times. Later, in the *Golaknath case*<sup>2</sup>, it was decided that the constitutional amendments could be nullified if its ultra-vires to the constitution as per Article 13<sup>3</sup> of the Indian Constitution. Further, in the case of *Kesavananda Bharati v. State of Kerala*<sup>4</sup> (1973), the Supreme Court exercised its power of judicial review and held that the basic structure of the constitution must be left untouched. It has to remain as it is and the Parliament cannot make any changes to Part III of the Constitution in any way, which would result in breach of fundamental rights guaranteed therein. In the case of *Shankari Prasad*, this was again

reiterated by the court that the fundamental rights that form the basic structure of the constitution cannot be altered in the way of amendments.

After the case of *Kesavananda Bharati v. State of Kerala*, the scope of judicial review widened and, the interpretation of laws by the judiciary by exercising its power of judicial review, expressly provided in the Constitution through Articles 32 and 226 was acknowledged. In the case of *Minerva Mills*<sup>5</sup>, the 42nd amendment of the constitution passed in 1976, was slashed because it was against the basic structure of the constitution. In this decision, the Supreme Court found a middle ground between judicial review and parliamentary sovereignty. It was decided that although Parliament might change the Constitution, it could not alter its fundamental structure. In these cases, the judiciary's use of judicial review preserved the rights of citizens, upheld the integrity of the Constitution, and preserved the proper balance between the three organs of government.

#### **III. Judicial Review in Practice:**

##### A. Overview of constitutional provisions allowing judicial review:

- Article 13- Laws inconsistent or in derogation of the fundamental rights.
- Article 32- Remedies for enforcement of rights conferred in Part III.
- Article 131- Original Jurisdiction of the Supreme Court.
- Article 132- Appellate Jurisdiction of Supreme Court in Appeals from High Courts.
- Article 133- Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.
- Article 134- Appellate jurisdiction of the Supreme Court in regard to criminal matters.
- Article 134A- Certificate for appeal to the Supreme Court.

<sup>1</sup> Shankari Prasad v Union of India AIR 1951 SC 458

<sup>2</sup> Golaknath and Ors. v. State of Punjab and Anrs.1967 AIR 1643

<sup>3</sup> Article 13, Indian Constitution, 13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

<sup>4</sup> Kesavananda Bharati v. State of Kerala 1973 4 SCC 225

<sup>5</sup> Minerva Mills v Union of India AIR 1980 SC 1789

These are a few among many provisions that explicitly provide the performance of judicial review in activities of various organs. Articles 226 and 227 are the main provisions of judicial review of administrative actions by High Courts.

#### B. Judicial Review of Administrative Actions:

Review by courts of administrative actions to ensure their legality is, judicial review of administrative actions. The administrative action is legal if it is, according to the law, within the powers given to the authority by law, and in conformity with the principles of natural justice. Professor De Smith described Judicial Review of administrative action as “inevitable sporadic and peripheral”. The doctrine of ultra-vires forms the basic structure for the scrutiny of administrative decisions. The various grounds for judicial review include;

##### 1) Jurisdictional Error:

Lack of jurisdiction arises from subject matter being out of the purview of the authority vested in the administrative body. The court may interfere on the ground that the action exceeds the authority vested in the body; where it exercised its jurisdiction which it wasn't supposed to. A situation where an authority initially had jurisdiction over a matter but later exceeded it and its activities became illegal is referred to as an "excess of jurisdiction" case. Every administrative authority must be used lawfully. Judicial review will arise if the powers are misused. An "abuse of power" may occur for the following reasons: improper intent, a mistake that is evident from the record, bad faith, restricting discretion, non-consideration of information, etc.

##### 2) Irrationality:

An administrative authority's discretionary power is to be used carefully and responsibly. An administrative authority's judgment may be deemed irrational if it defies logic or widely accepted moral standards in such a way that no reasonable individual with due diligence could have come to the same conclusion. The case of *Associated Provincial Picture House v.*

*Wednesbury*<sup>6</sup> established "irrationality" as a basis for judicial review; which is popularly known as the "Wednesbury test."

##### 3) Procedural Impropriety

Two areas that fall under procedural impropriety include disregarding statutory regulations and the fundamental common-law rule of justice.

In *Ridge v. Baldwin*<sup>7</sup> (1963), procedural fairness makes it clear that it demands judicial review regardless of the entity making the decision. Ridge, the Chief Constable of Brighton, was placed under suspension due to allegations of conspiring to obstruct the legal process. After that, Ridge was suspended from the police, but he was not given the opportunity to attend the meeting where his dismissal was decided. He was later granted a chance to appear before the committee that had rejected his appeal. Ridge filed an appeal with the House of Lords, claiming that the committee had completely disregarded natural justice principles. This case has gained significance due to its emphasis on the connection between an individual's right to know the facts of the case against them and their right to a fair trial.

##### 4) Proportionality:

According to the principle of proportionality, no administrative action should be taken more than what is necessary. The court must primarily consider the benefits and drawbacks of the activity in question, according to the proportionality principle. Administrative actions can't be upheld unless they are beneficial and in the public interest. This theory strikes a balance between goals and methods.

When there is no reasonable connection between the goal to be attained and the methods of attaining it, the court invalidates the use of discretionary powers under the proportionality test. The administrative action

<sup>6</sup> *Associated Provincial Picture House v. Wednesbury* [1948] 1 KB 223, [1947] EWCA Civ 1

<sup>7</sup> *Ridge v. Baldwin* 1964] AC 40

will be overturned if it is excessive in comparison to the mischief.

In the case of *Hind Construction Co. v. Workmen*<sup>8</sup> (1965), a few employees requested a holiday and did not show up for work. Afterwards, their employment was terminated. The workers should not have been fired abruptly and permanently; instead, the court ruled that they should have received warnings and fines. It was not reasonable to believe that any rational employer would have imposed such severe discipline. According to the ruling of the court, the workers' penalty was both excessive and harsh.

#### 5) Legitimate Expectation:

If a public authority retracts a representation made to an individual, this theory acts as a basis for judicial review to safeguard the interest. The complainant, who has been made to understand explicitly or indirectly that specific steps will be taken to make a decision, has a right to expect certain things. There's a good reason for the expectation. This theory was developed to provide relief to those who have suffered harm as a result of their legitimate expectations being violated and who are unable to establish their claims through the application of the law.

#### C. Case Studies:

Significant case law has shaped judicial review in India and has brought attention to the judiciary's role in striking a balance between administrative discretion and the preservation of fundamental rights. This balance is demonstrated in the following cases:

*Maneka Gandhi v. Union of India*<sup>9</sup> (1978) is a prominent case in which the Supreme Court interpreted Article 21 (Right to Life and Personal Liberty) broadly, hence broadening the purview of judicial review. The authorities seized Maneka Gandhi's passport without giving her a reason. The Court held that the legal process had to be fair, reasonable, and just, stressing that any

arbitrary, unreasonable administrative decision might be challenged in court. The judiciary's role in defending individual rights against overreaching administrative actions was reaffirmed by this ruling.

Another important case is *SP Gupta v. Union of India*<sup>10</sup> (1981), popularly referred to as the "Judges' Transfer Case." The Court's handling of judicial transfers and appointments is the start of the judiciary's assertiveness in cases involving governmental discretion. Although the Court initially adopted a conservative stance, yielding to the executive's power, this case established the groundwork for the judiciary's growing role in guaranteeing openness and equity in administrative rulings.

Judicial control over administrative agencies was further extended in the *Vineet Narain v. Union of India*<sup>11</sup> (1997) case. The case started when corrupt politicians and bureaucrats were investigated. To guarantee that the Central Bureau of Investigation (CBI) and other law enforcement agencies functioned independently and without political intervention, the Supreme Court released comprehensive rules. This case demonstrated the judiciary's approach to examining administrative inefficiencies and guaranteeing the accountability and integrity of administrative bodies.

#### IV. Challenges and Criticisms:

Judicial review is a procedure that is criticized and faced with various obstacles in India, notwithstanding its achievements. The overreach of the judiciary is one main worry. This happens when the judiciary intrudes on the executive branch's territory beyond the bounds of its constitutional mandate. The growing participation of the court in administrative and policy affairs, according to critics, compromises the independence of the executive branch and negates the separation of powers. There was friction in the judiciary over issues that many felt should be left to political judgment. One

<sup>8</sup> Hind Construction Co. v. Workmen 1965 AIR 917

<sup>9</sup> Maneka Gandhi v. Union of India 1978 AIR 597, 1978 SCR (2) 621

<sup>10</sup> SP Gupta v. Union of India AIR 1982 SC 149

<sup>11</sup> Vineet Narain v. Union of India 1996 (2), SCC 199



example of this tension can be found in cases such as *S.R. Bommai v. Union of India*<sup>12</sup> (1994), which dealt with the imposition of the President's Rule in states.

A further obstacle is the delay in legal proceedings. The inability to examine administrative acts in a timely manner has been made worse by the backlog of cases and the legal system. The entire goal of judicial review may be undermined by this inefficiency, since it may make it harder to protect individual rights or maintain administrative responsibility when decisions are made slowly. Delays also contribute to an overworked judiciary that finds it difficult to strike a balance between the backlog of cases and the demands of addressing constitutional infringements.

Furthermore, there is ongoing debate over how to strike a balance between judicial restraint and activism. Judicial activism, or the practice of courts taking aggressive action in situations of public interest, has been criticized for creating uncertainty in government even though it has been crucial in forming Indian law. The judiciary has demonstrated its readiness to intervene when the administration fails by actively participating in policy decisions. One example of this is the *Vishaka v. State of Rajasthan*<sup>13</sup> (1997) case, in which the Court established rules for tackling workplace sexual harassment. As demonstrated by the judiciary's involvement in economic policy and environmental governance, where experts contend that judges lack the technical knowledge to handle such choices properly, such activism can cause conflicts.

Concerns regarding these matters' effects on administrative effectiveness are raised. Court involvement in policy and administrative choices can lead to a situation in which officials become too cautious and refrain from taking decisive action to avoid possible judicial scrutiny.

## **V. Conclusion:**

In order to maintain accountable, transparent, and constitutionally sound governance in India, judicial scrutiny of administrative decisions is essential. Prominent cases of Maneka Gandhi, SP Gupta, and Vineet Narain underscore the vital role played by the court in safeguarding individual liberties and upholding the rule of law. Over time, the judiciary's authority to examine administrative decisions has grown, and it is now a crucial institution in defending citizens' fundamental rights from arbitrary or unreasonable official action.

However, there are several obstacles in the way of judicial review as a practice. The discussion surrounding judicial review is still shaped by concerns about judicial overreach, decision-making delays, and striking a balance between activism and restraint. Judicial activism has been crucial in guaranteeing government accountability and improving social justice, but it also gives rise to worries about judicial intrusion into the executive branch and the ensuing inefficiencies in governance.

To avoid needless intervention in administrative procedures and uphold the judiciary's position as a guardian of basic rights, the limits of judicial action must be clearly understood going ahead. Reducing delays will also require improving judicial efficiency, whether through technology integration or procedural improvements. India can guarantee that its governance structure operates in a way that is both administratively effective and complies with the Constitution by carefully balancing judicial monitoring and administrative discretion.

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